

# Should AT&T police the Internet?

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**A decade after the government said that AT&T and other service providers don't have to police their networks for pirated content, the telecommunications giant is voluntarily looking for ways to play traffic cop.**

For the past several months, AT&T executives have said the company is testing technology to filter traffic on its network to look for copyrighted material that is being illegally distributed. James Cicconi, senior executive vice president for external and legislative affairs for AT&T, reiterated the carrier's plans last week during a panel discussion at the Consumer Electronics Show in Las Vegas.

"We are very interested in a technology-based solution and we think a network-based solution is the optimal way to approach this," Cicconi said in a *New York Times* article. "We recognize we are not there yet but there are a lot of promising technologies. But we are having an open discussion with a number of content companies, including NBC Universal, to try to explore various technologies that are out there."

AT&T's plans would turn the nation's largest telephone company into a kind of network cop, a role that some say could turn dangerous for the company. For one, filtering packets to determine whether they contain copyrighted material raises privacy concerns. And AT&T customers who have already been concerned about the company's alleged role in the National Security Agency's domestic spy program, could take their broadband, TV and telephony business to a competitor. Also, AT&T could be opening itself up to a mountain of legal troubles.

"I can't see why filtering traffic would be of interest to AT&T," said Tim Wu, a law professor at Columbia University and an Internet pundit. "AT&T spent six years and millions of dollars lobbying for a law so they wouldn't have to filter for copyrighted material on their network. And now they want to do it."

AT&T hasn't indicated which technology it might use. But it has confirmed that it's been testing software from a number of companies including Vobile, a start-up in which AT&T has also invested. The carrier has also said that it's been working for the past six months with members of the Motion Picture Association of America and Recording Industry Association of America to figure out ways in which it can curb the flow of illegal content on its network.

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--Michael Balmoris, spokesman, AT&T

AT&T argues that it must get involved in stopping the flow of pirated content because much of

this content is shared using peer-to-peer protocols, which eats up valuable network bandwidth, slowing network connections for many of its customers.

"Ultimately, our customers and their online experience come first," said Michael Balmoris, a spokesman for AT&T. "This is not about the vast majority of customers who consume content online legally. This is about combating illegal activity."

## **Content agreements an issue**

AT&T is also likely driven by its need to strike deals with content providers for its U-Verse IPTV service. Voluntarily agreeing to filter traffic on its network could help the company get a more favorable deal with content owners, such as NBC Universal or Disney.

Rick Cotton, executive vice president and general counsel for NBC Universal, said he often argues the network management point when trying to persuade Internet service providers to filter traffic. But he admits that content agreements also factor into the discussion.

"I also make the argument that it doesn't make sense to allow people to utilize (the carriers') infrastructure to steal material that (the carriers are) trying to acquire for another part of their business," he said. "Can I say which consideration affects which ISPs? I can't answer that question. But I do think it's something they ought to take into account."

So far, most ISPs have remained tight-lipped about whether they are testing content filtering on their networks. The other two major phone companies in the country, Verizon Communications and Qwest Communications International, declined to comment for this story. Time Warner Cable, the second largest cable operator in the nation, wouldn't confirm whether it is testing filtering technology, but a spokesman said the company is working closely with copyright holders to address the piracy issue.

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Knowledge

Comcast, the largest cable operator in the country, said it is not using or testing content filtering technology. Last year, the company got into hot water when there were reports that it had been slowing down some peer-to-peer traffic when the network was congested. The Federal Communications Commission is currently investigating the situation.

That said, the movement to involve ISPs in monitoring and filtering traffic has been growing internationally. In November, ISPs and content producers in France signed an agreement, backed by French President Nicolas Sarkozy, to begin testing filtering technology on carrier networks. A similar movement is afoot in the United Kingdom. And late last year, officials in Australia said they hoped ISPs would implement filtering technology to remove pornography from Internet connections that connect to schools.

These moves come despite widespread criticism from consumer activists that content filtering violates customers' privacy.

"Content filtering is like the cops knocking on everyone's door to make sure there are no stolen goods inside," said Art Brodsky, a spokesman for Public Knowledge, a digital-rights public interest group. "Searching packets on a network throws out the whole idea of innocent until proven guilty."

Critics also say AT&T's moves could put it and other ISPs in a precarious legal situation by not only admitting that it can filter traffic, but also indicating that it has a responsibility to do so. That is exactly

what has happened in Europe. A Belgian court last summer ordered an ISP to use filtering technology to keep pirated content off its network.

"I just think this exposes AT&T to some expensive liability," Wu said. "The fact is that it's not easy to figure out what infringes a copyright and what doesn't. It's difficult to believe that an algorithm could do this when the U.S. Supreme Court is often called upon to answer the same question. And when you're talking about copyright, the liability is huge."

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This is exactly why AT&T along with Verizon lobbied Congress more than a decade ago to include a safe harbor in the 1998 Digital Millennium Copyright Act (DMCA) that essentially protects them from liability when their customers use their networks or search engines to illegally distribute copyrighted material.

These network operators won their fight by arguing that illegal content merely passes through their networks, and it is unreasonable to ask network operators to take on the task of filtering packets to see if they have violated copyright laws. As a result, most of the legal challenges since the DMCA was passed have fallen on peer-to-peer sharing sites and user-generated sites like YouTube and MySpace. YouTube--owned by Google--is currently fending off a \$1 billion lawsuit from Viacom for copyright infringement.

But NBC's Cotton says that if operators work in good faith with content providers, legal issues could be avoided.

"We have agreed to put aside getting into an argument of legal responsibilities," Cotton said. "I think what everyone has come to realize is that the situation is not tenable. And if we can work out a set of reasonable steps to reduce the amount of pirated traffic, it's a win-win for their customers as well as for the content companies."

Cotton added that major steps have already been made between big media companies and some user-generated video sites. In October, media companies--including CBS, Fox Entertainment Group, NBC Universal, Viacom, and Disney along with Microsoft, News Corp.'s MySpace.com, and video-sharing sites Dailymotion and Veoh Networks--agreed to a set of guidelines for using filtering technology and taking down copyrighted content. He also acknowledged that the content community doesn't expect these measures to be fool-proof.

"No one is looking for perfection," he said. "People are prepared to tolerate and accept that that's a reality. The fact is there is a great

deal that can be done in various technology environments."

Still, Cotton and others in the entertainment industry believe that monitoring traffic at the network level is a necessity.

"The YouTubes and MySpaces of the world are obvious places to look for copyright infringement," said Steven Weinstein, president and CEO of MovieLabs, the research and development arm of the film industry. "But if we are talking about peer-to-peer traffic, which is how a lot of content is illegally distributed, there is no single entity where the content originates. So the only way to find it is at the ISP level."

But one lingering question remains. Does the technology exist to offer accurate content filtering at

the network level? MovieLabs conducted tests last year of about a dozen "digital fingerprinting" technologies from companies such as Gracenote, Vobile, and Audible Magic. Certain products worked well in some environments, like on user-generated Web sites and on university networks, Weinstein said. But using the technology on a large-scale, high-speed carrier network has still not been proven.

That said, developers of this technology are confident it's ready for prime time. They say the bigger hurdle is allaying consumer fears that the technology invades privacy.

"We have the technology to filter traffic today," said Vance Ikezoye, CEO and co-founder of Audible Magic, whose solution is being used by MySpace. "What will take longer to work out are the larger political and public policy issues."

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